



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDCL-S FFL
For the tenants: MNDCT MNDSD-DR FFT

Introduction

This hearing was convened as a result of three Applications for Dispute Resolution (applications), two of which were by the tenant and one of which was by the landlord. The parties are seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$2,662.40 for compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee. The tenants applied for two monetary orders, the first in the amount of \$2,400.00 and the second for \$11,169.20 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for double the return of their security deposit and to recover the cost of two filing fees.

Two agents for the landlord, BW (agent) and KK (agent 2) and the tenant attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process and at the conclusion of the hearing. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that they received the evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. As a result, I find the

parties were sufficiently served in accordance with the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

Both parties confirmed their respective email addresses during the hearing. The parties were advised that the Decision would be emailed to both parties.

Issues to be Decided

- Is either party entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is either party entitled to the recovery of the cost of the filing fee(s) under the Act?

Background and Evidence

A fixed-term tenancy began on November 1, 2021 and was scheduled to convert to a month-to-month tenancy after October 31, 2022. Monthly rent in the amount of \$2,300.00 was due on the first day of each month. The tenant paid a security deposit of \$1,150.00 at the start of the tenancy, which the landlord continues to hold.

Landlord's claim

The landlord's claim for \$2,662.40, which I find contained an addition error and actually totals \$2,642.60 is comprised as follows:

| ITEM DESCRIPTION | AMOUNT CLAIMED |
|---------------------------------------|-------------------|
| 1. November 1-18, 2021 pro-rated rent | \$1,392.60 |
| 2. Liquidated damages | \$1,150.00 |
| 3. Filing fee | \$100.00 |
| TOTAL | \$2,642.60 |

Regarding item 1, the agents stated that in September 2021, the property was marketed, and the agents were most impressed with the application to rent from the tenant so they decided to offer the rental unit to the tenant. The tenant signed a fixed-term tenancy and paid a security deposit of \$1,150.00. The agents stated that the

tenant came through the rental unit twice before signing the tenancy agreement and that both times, there was some restoration work obvious including a hanging intercom speaker, which is shown in a photo presented and a missing bathroom fan in the bathroom, which the agents stated was going to be re-installed as an earlier pipe leak had been repaired before the tenancy began. The tenancy agreement was signed by the parties on October 8, 2021.

The tenant claims that on the move-in day, the work still to be done was more than what they were comfortable with and that the tenant made the decision not to move into the rental unit as a result. The tenant also said it was not possible to have a shower with no bathroom fan, which I will address further below. The landlord stated the tenant paid rent for November in the amount of \$2,300.00 but that after the tenant failed to move in, the agents found new tenants who moved in for November 19-30, and paid \$907.40 for that portion of November, 2021 rent, leaving a credit owing to the tenant of \$907.40 as otherwise the landlord would benefit from receiving 2 rental amount for the period of November 19-30, 2021, which would be unjust enrichment.

The agents confirmed that the tenant did not write to the landlord to have repairs completed before moving in and just verbally advised the landlord that they were refusing to move into the rental unit. A written forwarding address was provided by the tenant dated November 17, 2021, with a letter and the landlord filed their application claiming towards the security deposit on December 2, 2021, which means the landlords applied within the 15-day timeline under section 38 of the Act.

The tenant claims the agents did not advise the tenant of a prior water leak and also claims that they were not aware there was any water damage in the unit, which the agents stated was not true as the photo evidence supports that it would have been obvious to the tenant. The agents also stated that the tenant was informed at both showings of the prior water leak and the restoration work done.

Regarding item 2, the agents presented the tenancy agreement addendum (Addendum) which indicates the following:

8. LIQUIDATED DAMAGES IN THE EVENT OF BREAKING THE LEASE: If the Tenant(s) repudiates or breaches the fixed term tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Agreement as being at an end. In such event, the sum of \$1,150.00 plus GST of \$57.50 will be paid by the Tenant(s) to the Landlord or Vancouver Luxury Realty (VLR) as damages, and not as a penalty, toward the administration costs of re-renting the Rental Unit. The Landlord and Tenant(s) acknowledge and agree that the payment of such damages will not preclude the Landlord from exercising any right of pursuing any remedy available in law or in equity for breach of this Agreement, including, but not limited to, claims for loss or damage pertaining to the Rental Unit or its appliances, furniture, furnishings or finishes, and damages incurred as a result of lost rental income, or any other costs or losses arising from or related to the Tenant(s) repudiation or breach of any term of this Agreement. The Landlord or VLR shall have no obligation to accept any repudiation or breach of the lease by the Tenant(s), and payment of the said sum of half month's rent shall not limit the Landlord's rights, remedies or claims in any way.

The landlord is not claiming the \$57.50 portion for GST in their application.

Tenant's claim

Regarding item 1, the tenant is seeking double the return of the \$1,150.00 security deposit. As noted above, the landlord's filed their application within the 15-day timeline provided for as the tenant's written forwarding address was dated November 17, 2022 submitted in evidence.

Regarding item 2 through 10, which are identified in the following table as 1 to 9, are as follows:

| <i>Document Number</i> | <i>Receipt / Estimate From</i> | <i>For</i> | <i>Amount</i> |
|-----------------------------------|--------------------------------|---|-------------------|
| #1 | Vancouver Luxury Realty | Unreturned first month rent | \$ 2300 |
| #2 | Orca Realty | Partial substitute accommodation for late November | \$ 591 |
| #3 | [REDACTED] | Temporary furniture storage fee for November | \$ 500 |
| #4 | [REDACTED] | Tenant agreed to pay for November after receiving owed amounts | \$ 1000 |
| #5 | Orca Realty | Substitute accommodation rent arrears for the minimum contract length | \$ 4200 |
| #6 | BC Hydro | Utility setting up fee for [REDACTED] | \$ 13.02 |
| #7 | Square One Insurance | Insurance to [REDACTED] | \$ 218.28 |
| #8 | UHaul | Moving attempt on Nov 01 | \$ 46.9 |
| #9 | | Emotional damages | \$ 2300 |
| #10 | | | \$ |
| Total monetary order claim | | | \$ 11169.2 |

The agents did not agree to any of the items claimed by the tenant and stated that the tenant breached the Act by failing to move in and ending a fixed-term tenancy.

The tenant was advised during the hearing that I agreed with the agents and that I found the photo evidence to be compelling and preferred the testimony of the agents over that of the tenant, which I will address further below. As a result, the tenant's entire claim was dismissed without leave to reapply, due to insufficient evidence.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both applicants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement by the respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim

Item 1 – Firstly, I have reviewed the photo evidence and I find it is more likely than not that with a hanging intercom speaker and missing bathroom fan, that the tenant would have been aware that there was work being completed in the rental unit **before** signing the fixed-term tenancy. I am also not persuaded by the tenant claiming they could not have a shower in a bathroom without a bathroom fan. As a result, I find it is more likely than not that the tenant signed the fixed-term tenancy after seeing a hanging intercom and missing bathroom fan. As a result, I find that a tenancy agreement was formed by way of a contract, with an offer, acceptance and consideration paid via security deposit of \$1,150.00 and the first month of rent of \$2,300.00.

As the agents confirmed they were able to re-rent to a new tenant as of November 19, 2021 and received \$907.40 from the new tenants for November 19-30, 2021, inclusive, I find the landlord owes the tenant \$907.40 in the amount of rent offset by the new tenants. I also find the tenant breached section 45(2) of the Act, which applies and states:

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) **is not earlier than one month after the date the landlord receives the notice,**
- (b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**
- (c) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

[emphasis added]

Furthermore, section 16 of the Act applies and states:

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, **whether or not the tenant ever occupies the rental unit.**

[emphasis added]

Given the above, I find the tenancy began as of November 1, 2021 and that the tenant breached a fixed-term tenancy by failing to move in. I find the tenant's remedy was to write to the landlord requesting any required repairs, instead of just refusing to move in. Therefore, I find the tenant owes **\$1,392.60**, which was the amount owing for November 2021 rent of \$2,300.00, less the \$907.40 portion received from new tenants for the period of November 19-30, 2021. I find the landlord have met the burden of proof as a result.

Item 2 – Consistent with my finding for item 1, I also find the landlord is entitled to **\$1,150.00** for liquidated damages due to the tenant breaching the fixed-term tenancy and that the tenant signed a written tenancy agreement, a contract, which indicated that the tenant would owe this amount if they breached the fixed-term tenancy, which I find the tenant did. Therefore, I grant the landlord \$1,150.00 as claimed for the liquidated damages.

As the landlord's claim had merit, I grant the landlord **\$100.00** for the filing fee pursuant to section 72 of the Act.

As item one results in the credit to the tenant of \$907.40, I deduct that amount from item 2, \$1,150.00, and add the filing fee of \$100.00, for a total monetary claim for the landlord in the amount of **\$342.60**.

Tenants' claim

As the tenant breached the fixed-term tenancy and the landlord applied within 15 days of November 17, 2021 claiming towards the tenant's security deposit of \$1,150.00., I find the tenant's application fails in its entirety as I find the tenancy ended by the tenant's own actions and not from the actions of the landlord. Therefore, I find that all costs being claimed by the tenant also to be caused by the tenant's own actions and are thereby **frivolous and without any merit** as those costs would not have been incurred **had the tenant remained in the rental unit as per their written tenancy contract**. I find the tenant fails to meet all four parts of the test for damages and loss and has not met the burden of proof.

Given the above, I do not grant either filing fee for the tenant's two applications, which could have been combined in one application, which the tenant failed to do.

I authorize the landlord to retain **\$342.60** from the tenant's \$1,150.00 security deposit in full satisfaction of the landlord's monetary claim of \$342.60. As there is a balance

owing to the tenant from the security deposit, I grant the tenant a monetary order pursuant to section 67 of the Act, for the tenant's security deposit balance in the amount of **\$807.40**, and which has accrued \$0.00 in interest under the Act.

Conclusion

I dismiss the tenants' application in full without leave to reapply due to insufficient evidence.

The landlord's claim is partially successful. The landlord has proven a total monetary claim in the amount of \$342.60. I have authorized the landlord to retain that amount from the tenant's security deposit of \$1,150.00, leaving a balance owing by the landlord to the tenant for the security deposit balance of \$807.40.

The tenant is granted a monetary order pursuant to section 67 of the Act, in the amount of \$807.40. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord, if necessary.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 13, 2022

Residential Tenancy Branch